16-466

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 140.

LOT M. MORRILL, COLLECTOR OF CUSTOMS, &C., PLAINTIFF IN ERROR,

vs.

JOHN WINSLOW JONES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

FILED NOVEMBER 8, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 140.

LOT M. MORRILL, COLLECTOR OF CUSTOMS, &C., PLAINTIFF IN ERROR,

vs.

JOHN WINSLOW JONES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

INDEX.

	Original.	Print.
Writ of error	1	1
Return	3	1
Citation	4	1
Caption	5	2
Petition for removal of cause	6	2
Declaration	10	4
Writ of certiorari	13	5
Motion to dismiss	15	6
Plea	16	6
Trial	18	7
Verdict and judgment	19	7
Bill of exceptions	20	8
Statement	20	8
Motion to dismiss	23	9
Oath of Robert A. Barnard	25	10
Statement of United States consul	26	10
Declaration of R. A. Barnard	27	10
Rewarehousing and withdrawal entry	30	12
Warehouse entry and transportation in United States	31	13
Certificate of United States consul	33	14
Invoice	34	15
Warehousing entry, &c	35	15
Rewarehousing entry, &c	37	17
Protest, December 3, 1878	39	18
Protest, December 23, 1878	46	20
Appeal to Secretary of Treasury	54	23
Letter of collector transmitting protest and appeal	61	25
Special report of appraiser	66	27
Letter of collector transmitting protest and appeal	69	28

	Original.	Print.
Decision of Secretary of the Treasury	72	29
Rules and regulations for free entry of animals, &c	75	29
Commission to take testimony	78	31
Interrogatories	79	32
Cross-interrogatories	81	32
Testimony of J. L. Inches	84	33
Bill of exceptions signed	91	36
Clerk's certificate	91	36

1 UNITED STATES OF AMERICA:

The President of the United States, to the honorable judges of the circuit court of the United States for the district of Maine, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between John Winslow Jones, of Deering, in the county of Cumberland and State of Maine, and Lot M. Morrill, collector of customs for the United States revenue district of Portland and Falmouth, in said State of Maine, a manifest error hath happened, to the great damage of the said Lot M. Morrill, collector, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,

2 to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within the first thirty days of the term holden on the second Monday of October, A. D. 1879, in the said Supreme Court then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this twenty-third day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] A. H. DAVIS, *Clerk.*

Allowed:

JOHN LOWELL,
Judge of the Circuit Court of the United States for the First Circuit.

3 Circuit court of the United States, district of Maine, ss.

And now, here, the judges of the circuit court of the United States in and for the district of Maine make return of this writ by annexing hereto and sending herewith, under the seal of the said circuit court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, A. H. Davis, clerk of said circuit court of the United States in and for the district of Maine, have hereto set my hand and the seal of said court this 31st day of October, A. D. 1879.

[SEAL.] A. H. DAVIS, *Clerk.*

(Indorsed:) Writ of error. Maine district, ss. Office clerk C. C. U. S. Rec'd and filed Oct. 24, 1879. Attest, A. H. Davis, clerk.

4 The United States of America, to John Winslow Jones, of Deering, in the county of Cumberland, and State of Maine, greeting:

You are hereby cited and admonished to be and appear, on the third

Monday of said term, at a Supreme Court of the United States, holden at Washington, on the second Monday of October, A. D. 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Maine, wherein Lot M. Morrill, collector of customs for the United States revenue district of Portland and Falmouth, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Lowell, judge of the circuit court of the United States for the first judicial circuit, this twenty-third day of October, A. D. 1879.

[SEAL.] JOHN LOWELL.

I hereby acknowledge due, sufficient, and legal service of this citation, and acknowledge service of the writ of error therein mentioned, by a copy thereof being this day lodged for the defendant in error in the clerk's office, where the record remains, and waive any further notice.

JOHN WINSLOW JONES,
By CHAS. P. MATTOCKS,
His Att'y.

Portland, Maine, October 24, A. D. 1879.

(Indorsed:) Citation. Maine district, ss. Office clerk C. C. U. S. Rec'd and filed Oct. 24, 1879. Attest, A. H. Davis, clerk.

5 *Copy of judgment.*

UNITED STATES OF AMERICA,
Maine District, ss: First Circuit.

At a term of the circuit court of the United States for the first circuit, begun and holden at Portland, within and for the district of Maine, on Tuesday, the twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable John Lowell, circuit judge.

JOHN WINSLOW JONES, OF DEERING, IN THE COUNTY of Cumberland and State of Maine, plaintiff,
v.
LOT M. MORRILL, OF PORTLAND, IN THE COUNTY OF Cumberland and State of Maine, collector of customs for the revenue district of Portland and Falmouth, in said State of Maine, defendant. } No. 34.

On the 4th day of March, A. D. 1879, Wilbur F. Lunt, attorney of the United States for the district of Maine, filed the following:

6 *Petition.*

Circuit court of the United States, district of Maine.

To the honorable the circuit court of the United States, held at Portland, in and for the district of Maine:

The petition of Lot M. Morrill, of Portland, in the county of Cumberland, within said district, respectfully shows:

That your petitioner was at the various times hereinafter named and is now an officer of the United States, to wit, collector of customs of the port of Portland and Falmouth, in said district of Maine.

That your petitioner was, on the eigthteenth day of February, A. D. 1879, personally served with a writ of summons and attachment, issued out of the superior court in and for the county of Cumberland and State of Maine, on the fifteenth day of February, A. D. 1879, wherein John Winslow Jones, of Deering, in said county of Cumberland, and State of Maine, is named as plaintiff, and your petitioner is defendant.

That said writ was served on your petitioner in the city of Portland, in said district of Maine; that by such issuing and service of said writ, a suit has been commenced against your petitioner in
7 the said superior court, wherein your petitioner is summoned to appear in said superior court on the first Tuesday of March, A. D. 1879, to answer unto said plaintiff, in a plea of the case in said writ set forth, wherein said John Winslow Jones claims to have, receive, and recover of your petitioner the sum of one hundred and sixty dollars and forty cents, for so much money before that time in the declaration in said writ alleged to have been had and received by your petitioner, as collector of customs for the port of Portland and Falmouth, to the said plaintiff's use. That each and every of the acts done by your petitioner for or on account of which the said suit was commenced, was done under the provisions of the revenue laws of the United States, and under color of such laws.

That this petition is made pursuant to the provisions of section 643 of the Revised Statutes of the United States, as reprinted with amendments, under authority of an act of Congress approved the second day of March, in the year one thousand eight hundred and seventy-seven.

Wherefore your petitioner prays that the said suit may be removed into the circuit court of the United States held at Portland, in and for
8 the district of Maine, pursuant to the statute of the United States in such case made and provided. And your petitioner will ever pray.

Dated at Portland this fourth day of March, A. D. 1879.

LOT M. MORRILL.

DISTRICT OF MAINE, *ss:*

Lot M. Morrill, of the city of Portland, in said district of Maine, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes the same to be true.

LOT M. MORRILL.

Subscribed and sworn to before me this fourth day of March, A. D. 1879.

LEWIS B. SMITH, [SEAL.]
Notary Public.

To which petition was annexed the following:

Certificate.

DISTRICT OF MAINE, *ss:*

9 I, Wilbur F. Lunt, do hereby certify that I reside in the city of Portland in said district; that I am the attorney of the United States for said district of Maine, and an attorney and counsellor at law, admitted to practice in all the courts of the State of Maine, and in the circuit court of the United States, for the district of Maine; that as counsel for the above-named petitioner, I have examined the proceedings against him, and have carefully inquired into all the matters set forth in the foregoing petition, and that I believe the same to be true.

Portland, March 4, 1879.

WILBUR F. LUNT,
Counsel for Petitioner.

Whereupon, on said 4th day of March, said cause was entered on the docket of the September term of this court, and on the same day was issued a writ of certiorari to said superior court, requiring it to send to this court the record and proceedings in the cause; and on the 23d day of April next ensuing, being the first day of the April term of this court, is filed the following:

10 *Certified copy of record and proceedings.*

STATE OF MAINE, *Cumberland, ss:*

At a superior court which was begun and held at Portland, within and for the county of Cumberland, on the first Tuesday of March, being the fourth day of said month, anno Domini 1879.

By Hon. Perceival Bonney, justice.

JOHN WINSLOW JONES, OF DEERING, IN the County of Cumberland and State of Maine, plaintiff,
versus
LOT M. MORRILL, OF PORTLAND, IN SAID county and State, collector of customs for the revenue district of Portland and Falmouth, in said State, defendant.

In a plea of the case, for that the said defendant, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, at Portland, in said county of Cumberland, being indebted to the plaintiff in the sum of seventy-four dollars, for so much money
11 before that time had and received by the said defendant to the plaintiff's use, in consideration thereof, then and there promised the plaintiff to pay him that sum on demand. Yet, though requested, the said defendant hath never paid the same, or any part thereof, but refuses so to do.

Also, for that the said defendant, on the fourteenth day of December,

in the year of our Lord one thousand eight hundred and seventy-eight, at Portland, aforesaid, being indebted to the plaintiff in another sum of eighty-six dollars and forty cents, for so much money before that time had and received by the said defendant to the plaintiff's use, in consideration thereof, then and there promised the plaintiff to pay him that sum on demand. Yet, though requested, the said defendant hath never paid the same, or any part thereof, but refuses so to do.

Also, for that the said defendant, at said Portland, on the day of the purchase of this writ, being indebted to the plaintiff in the sum of one hundred and sixty dollars and forty cents, in consideration thereof, promised to pay the same amount to the plaintiff on demand. Yet, though requested, he has not paid the same, or any part thereof.

12 Also, for that on the day of the purchase of this writ at said Portland, the said defendant being indebted to the plaintiff in the sum of one hundred and sixty dollars and forty cents, demanded, exacted, and received of the plaintiff by the defendant, then, and ever since, collector of customs for the district of Portland and Falmouth, in said State of Maine, and by the plaintiff paid under protest, and before that time had and received by the said defendant to the use of the plaintiff, in consideration thereof promised to pay the plaintiff the same sum when he should thereafterwards be requested; yet the said defendant has not paid the same, or any part thereof, though thereto afterwards often requested. To the damage of said plaintiff, as he says, the sum of three hundred dollars.

The writ in this action is dated the fifteenth day of February, A. D. 1879, and service made on defendant the eighteenth day of February, A. D. 1879. This action was entered in this court at the present term thereof.

13 And now, on the first day of the term following writ of certiorari, was served upon the justice of this court as follows, viz:

UNITED STATES OF AMERICA,
Maine District, ss:

The President of the United States of America to the honorable the judge of the superior court, holden at Portland, within and for the county of Cumberland, in the State of Maine, greeting:

We being willing for certain causes to be certified of the record and proceedings upon the writ of summons and attachment issued out of the clerk's office of the superior court in and for the county of Cumberland, on the fifteenth day of February, A. D. 1879, in favor of John Winslow Jones, of Deering, in said county, plaintiff, against Lot M. Morrill, of said Portland, collector of customs of the United States for the port of Portland and Falmouth, defendant. Made returnable before the said superior court on the first Tuesday of March, A. D. 1879, which suit is rep-

14 resented to us to have been brought for or on account of certain acts done under the revenue laws of the United States, or under color thereof, and that said suit has not been tried. Command you that the said record and proceedings touching the same fully and entirely as the same remain before you, by whatever names the parties are called

therein, you send, so that you have the same before the judge of our circuit court of the United States, holden at Portland, in said district of Maine, on the twenty-third day of April next, under your hand and seal, together with this writ, that we may thereupon cause to be done what of right and according to law ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Portland, aforesaid, the fourth day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

[L. S.] A. H. DAVIS, *Clerk.*

And thereupon, in evidence to the foregoing writ of certiorari, the action was ordered to be transferred to the circuit court of the United States
15 for the district of Maine, under the provisions of section 643 of the Revised Statutes of the United States.

Recorded by A. H. Dennett, clerk.

A true copy of record.

[L. S.] Attest: A. A. DENNELL, *Clerk.*

Said cause is thence continued to September term, A. D. 1879; and on the 3d day of said term, to wit, on the 25th day of September, is filed the following:

Motion to dismiss.

UNITED STATES OF AMERICA,
District of Maine, ss:

In the circuit court of the United States, September term, 1879.

JOHN WINSLOW JONES, PLAINTIFF,
v.
LOT M. MORRILL, COLLECTOR OF CUSTOMS OF the United States for the port of Portland and Falmouth, defendant.

And now the said defendant comes and moves to dismiss the above-entitled action, because he says that the said plaintiff did not, within thirty days after due notice of the appearance of the defendant by his attorney, serve on the defendant or his attorney a bill of particulars
16 of the plaintiff's demand, giving the name of the importer or importers, the description of the merchandise, and place from which imported, the name of the vessel or means of importation, the date of the invoice, the date of the entry at the custom-house, the precise amount of duty claimed to have been exacted in excess, the date of payment of said duties, the day and year on which protest was filed against the exaction thereof, the date of appeal thereon to the Secretary of the Treasury, and date of decision, if any, on such appeal, according to the provisions of section 3012 of the Revised Statutes of the United States.

LOT M. MORRILL,
Collector of Customs of the United States for the port of Portland and Falmouth,
By WILBUR F. LUNT, *His Attorney.*

Which motion is overruled, the defendant excepting.

And now the said defendant comes and defends the wrong and injury, when, &c., and for plea says that he never promised the plaintiff in manner and form as he hath in his writ declared against him, and of
17 this he puts himself upon the country.

By WILBUR F. LUNT, *His Attorney.*

And the plaintiff doth the like.

By C. P. MATTOCKS, *His Attorney.*

Brief statement.

And by way of brief statement of special matter in defense of said action the said defendant says:

That the merchandise upon which said duties were paid was fraudulently and illegally imported into the United States. That said merchandise, being animals alive, was subject to duty under the provisions of the statute of the United States, and no more than the lawful duties thereon were collected by the defendant. That said animals were not such animals as are exempt from duty under the provisions of § 2505 of the Revised Statutes of the United States and the regulations prescribed by the Secretary of the Treasury under the provisions thereof. That the plaintiff did not furnish proof thereof satisfactory to the Secretary of the Treasury, and to the said defendant collector. That the said defendant did not give notice in writing to the said collector within ten days after the
18 ascertainment and liquidation of the duties on said merchandise by the proper officer of the customs, upon each entry of said merchandise, setting forth in each of said writings distinctly and specifically the grounds of his objection to the payment of said duties.

LOT M. MORRILL,
Collector of Customs of the port of Portland and Falmouth,
By WILBUR F. LUNT, *His Attorney.*

And now the cause came on to be heard before a jury duly impanelled and sworn; and after a full hearing of the evidence, the court gave certain rulings, directions, and instructions to the jury as set forth in the bill of exceptions, to which rulings, directions, and instructions, and to each and every part thereof, the defendant then and there in open court and before the cause was committed to the jury excepted, and prayed that said exceptions and each of them might be allowed. And the said defendant's bill of exceptions was then and there allowed and signed by the presiding judge, and then and
19 there placed on file and made a part of this record, and said cause is thereafter then and there committed to the jury, who, after mature deliberation thereon, return their verdict and "find that the defendant did promise in manner and form as the plaintiff in his writ and declaration hath declared against him, and assess damages for the plaintiff in the sum of one hundred and sixty-seven dollars and sixty-one cents ($167.61).

And thereafter, to wit, on the 22nd day of October, A. D. 1879, it was ordered (Fox, J.) that judgment be entered on the verdict as of the 26th day of September, A. D. 1879, being the date of the verdict. All which being seen and understood, it is therefore considered by the court here that said plaintiff recover of said defendant said sum of one hundred sixty-

seven dollars and sixty-one cents ($167.61) debt or damage, and his costs of suit taxed at .

Recorded from the original papers and minutes.
Attest:

A. H. DAVIS, *Clerk.*

20 *Bill of exceptions.*

UNITED STATES OF AMERICA:

Circuit court of the United States, first circuit, Maine district. September term, 1879.

JOHN WINSLOW JONES
v.
LOT M. MORRILL, COLLECTOR OF CUSTOMS for the port of Portland and Falmouth.

Be it remembered that at a term of the circuit court of the United State for the first circuit, begun and holden at Portland, within and for the district of Maine, on the twenty-third day of September, A. D. 1879, by the honorable John Lowell, circuit judge, came John Winslow Jones, of Deering, in the State of Maine, a citizen of said State of Maine, and by writ of assumpsit declared against Lot M. Morrill, collector of the customs revenue of the United States for the port of Portland and Falmouth in said district of Maine, said action having been commenced on the fifteenth day of February, A. D. 1879, by writ returnable in the superior court for the county of Cumberland, in the State of Maine, at the term holden at
21 Portland, in said county, on the first Tuesday of March, A. D. 1879, and the matter in dispute being a claim for money had and received from the plaintiff by the defendant for duties upon certain merchandise imported into the United States at said port of Portland and Falmouth and exacted by the defendant under the revenue laws of the United States. Upon the fourth day of March, A. D. 1879, being the first Tuesday of said month, the defendant presented to the clerk of said circuit court at his office—said court not then being in session—his petition setting forth the nature of said suit, verified by the defendant's affidavit, together with a certificate signed by a counsellor at law of said circuit court stating that, as counsel for the petitioner, he had examined the proceedings against the defendant, and carefully inquired into all the matters set forth in said petition, and that he believed them to be true. Thereupon said cause was entered upon the docket of the September term, A. D. 1878, of the circuit court aforesaid. Said suit was commenced in said superior court by a writ of summons and attachment. Upon the entry of said cause upon the docket of the circuit court as aforesaid, the clerk
22 thereof issued a writ of certiorari to said superior court, requiring it to send to the circuit court the record and proceedings in said cause. The appearance of the attorneys both for plaintiff and defendant were entered upon the docket of the circuit court in the clerk's office at the time of the entry of said cause upon said docket as aforesaid. The defendant's attorney moved for a commission to issue to take the deposi-

tion of Julius L. Inches, and interrogatories and cross-interrogatories were duly filed therein, by counsel for both parties, on the fourteenth day of April, A. D. 1879, as will appear by the record. The appearance of the defendant's counsel remained upon the docket of said court at the April term, held on the twenty-third day of said month, A. D. 1879, and until the trial of said cause.

The plaintiff never filed the bill of particulars required in section 3012 of the Revised Statutes. Upon the twenty-third day of April, A. D. 1879, the said superior court sent up to the circuit court a copy of the writ and record in said action, and thereupon said action was continued until the present term. Before pleading, the defendant filed the
23 following motion to dismiss said suit:

UNITED STATES OF AMERICA,
District of Maine, ss:

In the circuit court of the United States, September term, 1879.

JOHN WINSLOW JONES, PLAINTIFF,
v.
LOT M. MORRILL, COLLECTOR OF CUSTOMS of the United States for the port of Portland and Falmouth, defendant.

And now the said defendant comes and moves to dismiss the above-entitled cause, because, he says, that the said plaintiff did not, within thirty days after due notice of the appearance of the defendant by his attorney, serve on the defendant or his attorney a bill of particulars of the plaintiff's demand, giving the name of the importer or importers, the description of the merchandise and place from which imported, the name of the vessel or means of importation, the date of the invoice, the date of the entry at the custom-house, the precise amount of duty claimed to have been exacted in excess, the date of payment of said duties, the day and
24 year on which protest was filed against the exaction thereof, the date of appeal thereon to the Secretary of the Treasury, and date of decision, if any, on such appeal, according to the provisions of section 3012 of the Revised Statutes of the United States.

LOT M. MORRILL,
Collector of Customs of the United States for the port of Portland and Falmouth.
By WILBUR F. LUNT,
His Attorney.

No notice of appearance of defendant other than as may be inferred from the facts stated was given the plaintiff or his attorney. Neither the defendant nor his attorney ever waived, orally or in writing, the service of said bill of particulars. At the trial the plaintiff offered to furnish a bill of particulars, and the court offered delay to defendant if he desired it.

The court overruled said motion. Thereupon the defendant pleaded the general issues and a brief statement of special matter in defense, which plea was joined by the plaintiff, as by the writ and declaration and pleas aforesaid, all of record, will appear. And thereupon said
25 cause came on for trial before said circuit court, at said September

term, before a jury empanelled for that purpose; and the said plaintiff to maintain and prove the issue on his part, introduced in evidence the testimony of numerous witnesses, and the entries, declarations, invoices, protests, appeals, and letters of the collector and Secretary of the Treasury, as follows:

CONSULATE OF THE UNITED STATES OF AMERICA,
St. John, New Brunswick, October 30th, 1878.

I, Robert A. Barnard, of Bridgeton, Maine, do solemnly swear that I have purchased one hundred and thirty-seven ewe sheep, and one ram, in Prince Edward Island and New Brunswick.

That all of said sheep I am taking to the United States for breeding purposes; one-half of them are going on my farm at Bridgeton, and one-half are going on the farm of Winslow Jones, of Deering, Maine. That said sheep are being shipped by the St. John & Maine Railway to be entered at Vanceboro', Maine; that all of these sheep are purchased in good faith for breeding purposes, and are not intended for sale.

26 That I am authorised to make this affidavit as to the sheep belonging to Mr. Jones, as I am his agent, and purchased them for him, as I have before stated.

(Signed) ROBERT A. BARNARD.

Sworn to before me this 30th day of October, 1878, by Robert A. Barnard.

(Signed) D. B. WARNER,
U. S. Consul.

CUSTOM HOUSE,
Portland Maine.

I hereby certify that the foregoing is a true copy of the oath of Robert A. Barnard, before the U. S. consulate at St. John, New Brunswick, now on file in this office.

Witness my hand and seal of office this 23rd day of Sept., A. D. 1879.

[L. S.] LOT M. MORRILL, *Collector.*

(Copy.)

[L. S.] CONSULATE OF THE UNITED STATES OF AMERICA,
St. John, New Brunswick, December 17th, 1878.

On the 30th day of October, 1878, J. M. Barnard made a sworn statement before me that certain one hundred and thirty-eight sheep that day being shipped over the St. John and Maine Railway for Vance-

27 boro', Maine, were purchased by him, said Barnard, for himself and J. W. Jones, of Portland, Maine, solely for the purpose of breeding, and not for the purpose of sale.

This statement is to declare that I believe said affidavit made by said Barnard to be true.

In testimony thereof, I have hereunto set my hand and affixed the seal of this consulate, the day and year first above written.

(Signed) D. B. WARNER.
U. S. Consul.

CUSTOM HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy, the United States consular certificate to oath, of J. M. Barnard, on 138 sheep shipped for himself and J. W. Jones, Portland, Maine, now on file in this office.

Witness my hand and seal of office this 23rd day of September, A. D. 1879.

[L. S.] LOT M. MORRILL, *Collector.*

(Copy.)

[L. S.] CARLETON, N. S., *Oct. 28th*, 1878.

I, the undersigned, declare, that I have bought for John Win-
28 slow Jones, of Portland, Maine, U. S. A., the following mentioned animals; these animals have been bought in the province of New Brunswick and in Prince Edward's Island, and are for breeding purposes.

1 Leicester ram, full blood	6 00
7 " ewes, " "	35 00
130 grade do. ewes	325 00
	366 00
Add expenses	38 00
	$404 00

They are for shipment to John W. Jones, Portland, Maine, U. S. A., by rail from Carleton, N. B.

(Signed) ROBERT A. BARNARD.

CUSTOM HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of the declaration of Robert A. Barnard, on file in this office.

Witness my hand and seal of office this 23rd day of Sept., A. D. 1879.

[L. S.] LOT M. MORRILL, *Collector.*

29 [Form No. 145. M. N. Rich, customs broker, custom-house, Portland, Me. Ctf. mailed Dec. 19, 1878.]

REWAREHOUSING AND WITHDRAWAL ENTRY FOR CONSUMPTION.

CUSTOM-HOUSE, PORTLAND, ME.,
Collector's Office, Nov. 18, 1878.

Entry of merchandise to be rewarehoused and withdrawn for immediate consumption by J. W. Jones, which was brought into this district on the 4th day of Nov., 1878, *by him, from the port of Vanceboro' on the M. C. R'y cars, having been originally imported into Vanceboro' by E. & N. A. R'y Co., in the E. & N. A. R'y cars from Carleton, N. B., on the 1st day of Nov.*, 1878:

Marks.	Nos.	Packages and contents.	Quantity.	Per cent.	20 per cent.	Per cent.	Per cent.	Total dutiable.	Dutiable value of each package.
				Free for breeding purposes.					
R. A. Barnard.	.....	8 sheep, commissions included.	.....	44 00	.....	.....	.....	$370	
		130 " " "	.....	.....	370				
		$370 @ 20 %=$74.00.							
		Liq'd 11. 27, '78. C. W. R.							
		P'd Nov. 18, 82. 80							
		D. M., cash'r.							
		Liquidated duty, 74. 00							
		Excess, 8. 80							

I, John W. Jones, do solemnly, sincerely, and truly swear that the 138 sheep mentioned in this entry were purchased and brought into this country on my account, and have been imported by me in good faith, for breeding purposes.

(Signed) J. W. JONES.

Sworn to before me.

L. B. SMITH, *D'y Coll'r.*

Fees: 1 oath, 20; 1 permit, 20; 2 certif., 40—80. C. W. R.

JOHN WINSLOW JONES,
By FRED. JONES,
Att'y, Consignee.

30 I, Fred. Jones, att'y, do solemnly, sincerely, and truly affirm that the goods described in this entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at Vanceboro', by E. & N. A. R'y Co., on the 1st day of Nov.,,1878, and that the said goods are the same in quality, quantity, value, and package (wastage and damage excepted), as at the time of original importation. So help me God.

Port of Portland.

FRED. JONES, *Att'y, Consignee.*

Sworn to this 18th day of Nov., 1878, before me.

L. B. SMITH, *D'y Collector.*

CUSTOM HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of withdrawal entry for consumption executed at this office Nov. 18th, 1878, now on file in this office.

Witness my hand and official seal this 23d day of September, 1879.

[L. S.] LOT M. MORRILL, *Collector.*

31 [Form No. 31, Treas. inst., Oct. 30, 1868. 401. Copy. Bonded, No. 2.]

CUSTOM-HOUSE, *Vanceboro', Nov. 1st*, 1878.

ENTRY FOR WAREHOUSE AND IMMEDIATE TRANSPORTATION IN THE UNITED STATES.

Entry for warehouse of merchandise imported by the E. & N. A. R'y Co. on the first day of November, 1878, in E. & N. A. R'y. J. Works, master, from Carleton, N. B., and to be immediately transported in bond to Portland, Me., by the E. & N. A. R'y Co.

Marks.	Nos.	Packages and contents.	Free.	20 per cent.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
R. A. Barnard.	.....	Sheep and com.....	44 00						
		130 sheep "	.....	370 00					
			44 00	370 00	....	....	....	$414 00	
		$370, @ 20 %. $74,00. Consigned to J. W. Jones, Portland. 60 days.							

CUSTOM-HOUSE, PORTLAND.

Entered for rewarehouse & consumption, Nov. 18, 1878.
Appraiser will examine.

L. B. SMITH,
Dep'y Coll'r.

Nov. 22, 1878.

One ram and seven ewes. Superior stock imported for breeding purposes. Free. Otherwise correct.

S. PERHAM, *App'd.*

TRUSTEES E. & N. A. R'Y,
By W. F. WORK, *Att'y.*

32 *Oath of consignee, importer, or agent.*

I, W. F. Works, do solemnly, sincerely, and truly swear that the invoice and bill of lading now produced by me to the collector of Passamaquoddy are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the car 703, whereof Jas. Works is master, from Carleton, on account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill

of lading of said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now tendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly, sincerely, and truly swear that, to the best of my knowledge and belief, J. W. Jones is the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the true value at Carleton of the said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same. So help me God.

W. F. WORKS, *Att'y.*

Sworn to this 1st day of Nov., 1878, before me.

J. B. STEVENS,
Deputy Collector.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of the transportation entry executed at Vanceboro' on the 1st day of Nov., 1878, now on file in this office.

Witness my hand and official seal this 23d day of Sept., A. D. 1879,

LOT. M. MORRILL, *Collector.*

I do solemnly, sincerely, and truly swear thatt the goods, wares, and merchandise described in the within entry, now delivered by me to the collector of customs for the port of Passamaquoddy, are truly intended to be transported in bond by me to the port of Portland, and delvered to the collector of said port, according to the provisions of the warehousing laws, and the regulations of the Secretary of the Treasury. So help me God.

Sworn to this 1st day of Nov'r, 1878, befere me.

J. B. STEVENS,
D'y Collector.

33 [L. S.] (Copy.)

CONSULATE OF THE UNITED STATES OF AMERICA,
St. John, New Brunswick, Dec. 2d, 1878.

This is to certify that John Avard, of this province, made a sworn statement before me the 11th instant, that certain one hundred and forty sheep that day being shipped over the Saint John and Maine Railway for Vanceboro', Maine, and consigned to J. W. Jones, Portland, Maine, were purchased by him (Avard) as the agent of said Jones; that said sheep were

purchased solely for breeding purposes, being of superior blood, &c., &c. That I did not certify that I believed such statement was not because I had doubt of the truth of said statement, but because I was not aware the Treasury regulations required such statement or certificate from the consul.

I now certify that I believe the above statement of said Avard to be true.

Witness my hand and seal the day and year above written.

[L. S.] (Signed) D. B. WARNER,
U. S. Consul.

34 CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of certificate of United States consul at St. John, N. B., on statement of John Avard, now on file in this office.

Witness my hand and official seal this 24th day of September, A. D. 1879.

[L. S.] LOT M. MORRILL,
Collector.

[L. S.] (Copy.)

Invoice of sheep shipped by John Avard to J. W. Jones, Portland, Maine.

140 less 2=138 sheep.....,$421 84

Point du Chline, Dec. 10th, 1878.
(Signed) JOHN AVARD.

The above sheep consigned to W. F. Works to be bonded to Portland.
(Signed) JOHN AVARD.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify the foregoing is a true copy of invoice of 138 sheep, shipped by John Avard to J. W. Jones, on file in this office.

Witness my hand and official seal this 23rd day of Sept., A. D. 1879.

[L. S.] LOT M. MORRILL,
Collector.

35 [Form No. 31.Treas., ins't Oct. 30, 1868. 435. Copy. Bonded, No. 3.]

CUSTOM HOUSE, *Vanceboro', Dec.* 12, 1878.

ENTRY FOR WAREHOUSE AND IMMEDIATE TRANSPORTATION IN THE UNITED STATES.

Entry for warehouse of merchandise imported by the E. & N. A. R'y, on the 12th day of Dec'r, 1878. in car 704, Hamen, master, from St. John, N. B., and to be immediately transported in bond to Portland by E. & N. A. R'y & M. C. R. R.

Marks.	Nos.	Packages and contents.	Quantity.	20 per cent.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
John Avard.	.....	138 sheep & com ..... $432 c. 20 %, $86.40.	.....	$432 00	.....	.....	.....	.....	.....

CUSTOM HOUSE, PORTLAND.

Entered for warehouse Dec. 14, 1878.
Appraiser will examine.

J. B. SMITH, *D'y Coll'r.*

Consignee makes oath that the sheep are for breeding purposes; that they are of superior stock, intended to improve the breed in the United States.

Dec. 17, 1878.
Rate and value correct.

S. PERHAM, *App'r.*

Consigned to J. W. Jones, Portland, 60 days.

TRUSTEES E. & N. A. R Y CO.,
By W. F. WORKS, *Att'y.*

Bond, ; oath, ; certif., ; permit, .

36 *Oath of consignee, importer, or agent.*

I, W. F. Works, att'y, do solemnly, sincerely, and truly swear that the invoice and bill of lading now produced by me to the collector of Passamaquoddy are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the car 704, whereof Hamen is master, from St. John, on account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now tendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly, sincerely, and truly swear that, to the best of my knowledge and belief, the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the true value at St. John of the said goods, wares, and merchandise, all charges thereon, and no other or different account, bounty, or drawback but such as has been actually allowed on the same. So help me God.

W. F. WORKS.

Sworn to this 12th day of Dec., 1878, before me.

J. B. STEVENS,
Deputy Collector.

CUSTOM HOUSE, PORTLAND, MAINE.

I hereby certify the foregoing is a true copy of transportation entry, executed at Vanceboro', Dec. 12, 1878, now on file in this office.

Witness my hand and official seal this 23d day of September, A. D. 1879.

[L. S.] LOT M. MORRILL,
Collector.

[Form No. 113.]

DISTRICT OF PORTLAND AND FALMOUTH,
Port of Portland:

I do solemnly, sincerely, and truly swear that the goods, wares, and merchandise described in the within entry, now delivered by me to the collector of customs for the port of Passamaquoddy, are truly intended to be transported in bond by me to the port of Portland, Me., and delivered to the collector of said port, according to the provisions of the warehousing laws and the regulations of the Secretary of the Treasury. So help me God.

W. WORKS, *Att'y.*

Sworn to this 12th day of Dec'r, 1878, before me.

J. B. STEVENS,
D'y Collector.

37 [Form No. 145.—M. N. Rich, customs broker, custom-house, Portland, Me. C. A. Mails, Dec. 18, 1878.]

REWAREHOUSING AND WITHDRAWAL ENTRY FOR CONSUMPTION.

CUSTOM-HOUSE, PORTLAND, ME.,
Collector's Office, Dec. 14, 1878.

Entry of merchandise to be rewarehoused and withdrawn for immediate consumption by J. W. Jones, which was brought into this district on the 14th day of Dec., 1878, *by him from the port of Vanceboro', on the M. C. R'y cars, having been originally imported into Vanceboro' by E. & N. A. R'y Co. in the E. & N. A. R'y cars from St. John, N. B., on the 12th day of Dec.*, 1878.

Marks.	Nos.	Packages and contents.	Quantity.	20 per cent.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
		138 sheep & com's.....		$432 00					
		$432 @ 20 % = $86. 40. C. W. R. P'd Dec. 14. D. M., cash'r.							

Estimated duty, $85.40. C. W. R.

I, John W. Jones, do solemnly, sincerely, and truly swear that the 138 sheep mentioned in this entry were purchased and brought into this country on my own account and have been imported by me in good faith for

breeding purposes only, as they are of superior breed and intended to improve the stock in the United States.

(Signed) J. W. JONES.

Sworn to before me.

L. B. SMITH,
D'y Coll'r.

Fees: 1 oath, 20; 1 " 20; 1 permit, 20; 2 certif., 40—$1.00. C. W. R.

(Signed) J. W. JONES,
Consignee.

38 I, J. W. Jones, do solemnly, sincerely, and truly swear that the goods described in this entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at Vanceboro', by E. & N. A. R'y Co., on the 12th day of Dec., 1878, and that the said goods are the same in quality, quantity, value, and package (wastage and damage excepted), as at the time of original importation. So help me God.

Port of Portland.

(Signed) J. W. JONES,
Congsignee.

Sworn to this 14th day of Dec'r, 1878, before me.

(Signed) L. B. SMITH,
D'y Collector.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of withdrawal entry for consumption executed at this office Dec. 12th, 1878, and remaining on file in this office.

Witness my hand and official seal the 23d day of September, A. D, 1879.

[L. S.] LOT M. MORRILL,
Collector.

39 (Copy.)

PLAINTIFF, A.

PORTLAND, *Dec. 3rd*, 1878.

Hon. LOT M. MORRILL,
Collector of Customs, Portland, Me.:

I hereby protest against your action in exacting duties on one hundred and thirty ewes imported from Prince Edward's Island for breeding purposes.

I carefully studied the statutes before importing these sheep, and satisfied myself that such sheep as I intended to import should be free of duty.

In stating my reasons why a great injustice is being done me in exacting the duty on said 130 sheep, I beg to call your honor's attention to the statutes on the subject, as well as to various decisions of the Secretary of

the Treasury on the subject. It seems to have received considerable attention, as will be seen from the various decisions of the department at Washington.

The statute, 1473 Heyl, refers to animals imported from beyond the seas for breeding purposes. "From beyond the seas" is interpreted in
40 Synopsis of Decisions, dated Dec. 9, 1875, No. 2548, "embraces all territory beyond the limits of the United States." The statute that animals specially imported for breeding purposes from beyond the seas (meaning Prince Edward's Island or any other place out of the United States) "shall be admitted free on proof satisfactory and under such regulations as he may prescribe." In reference to such proof as is satisfactory and he has prescribed—

By decision of Dec. 9, 1875, No. 2548, art. 383, Synopsis of Decisions, seems to have settled this question, and declares or clearly implies that proof satisfactory to the collector is proof satisfactory to the Secretary, viz: The collector must also be satisfied that the animals are of superior stock, adapted to the improving the breed in the United States.

As I have complied with the law in every particular, the only possible objection that can be urged against the admission of these sheep free is to satisfy your honor that the sheep are of superior stock, adapted to
41 improving the breed in the United States. This I have endeavored to do, and have shown that these sheep are of superior stock and particularly adapted to improving the breed of the United States, and I shall produce further evidence of this fact, which your honor has consented to hear.

In making your decision, your honor has placed great stress on instructions No. 805, in Synopsis of Decisions of 1871, viz: "As the prices paid for such animals are generally much higher than those paid for ordinary animals, the invoices will be of great assistance as to determining as to whether they are specially imported for breeding purposes or not."

I have offered to produce testimony from an ex-president of the agricultural society of this State, who has a portion of these sheep, and from other experts, that these sheep do come under the law, and are such as will improve the breed in the United States.

The price paid is low, but they were selected where every one
42 was picked specially for breeding, both as to quality of wool and the hardiness of the sheep; and it is the opinion of experts "that the wool of all of these sheep will go into combing-wool, and were selected for this purpose. This wool brings from 15 to 20 % higher prices per lb. than ordinary wool. It seems also from instructions quoted above, that the design of the government is to be satisfied that they are imported specially for breeding purposes. Synopsis of Decisions, 1871, No. 931. also refer to matter of breeding purposes and as to stock. It also seems from above, No. 931, that the collector should take the consul's certificate and oath of importer as satisfactory evidence, but in letter from department, dated Dec. 27, 1875, No. 2571, Synopsis of Decisions, it is stated, in addition, the "importer is required to present to the collector satisfactory evidence are of superior stock." This additional evidence I have repeatedly announced before your decision, that I was ready to pro-
43 duce. The letter of March 3, 1871, to collector at New Orleans (Synopsis of Decisions, 1871, No. 789) states explicitly, without any qualification, "stock for breeding purposes shall be admitted free."

I have been referred to No. 2200, Synopsis of Decisions, 1875, a decision as to sheep "which cost and were worth no more than the sheep which are usually imported for slaughtering purposes."

This does not apply to my sheep, and the party in this case did not conform to the law.

It would seem by the statute and ruling on the statute above quoted, that the oath of the importer and the certificate of the American consul at the port of entry should be proof satisfactory to the Secretary, and consequently to the collector, that the importation was within the law, and consequently free; but in this case additional proof has been offered that is perfectly unquestionable in reference to points that
44 under ordinary circumstances there might be a question, but in this case, in protesting against your decision, I am justified not only by the statute, but by every ruling of the department.

Further protesting against your decision, Robert A. Barnard, Bridgton, who bought the sheep, and who has been in possession of a ranch in California for several years, and owned many thousand of sheep, personally selected these sheep for breeding purpose. He is an expert in the business, and is trying, and is a pioneer in introducing as an experiment, sheep-breeding into the State of Maine on a large scale. Mr. Barnard would not be likely to subject himself to the expense of going to Prince Edward's Island, with all the annoyance and expense of transportation and custom-houses if as good a quality of sheep could be procured at home.

Further protesting against your decision, as I understand the law and
45 the intention of the United States Government, instead of laying unnecessary and uncalled-for burdens upon the agricultural interests of the States, but it is clearly the design of the law, by the very introduction of this statute, to foster these institutions.

It is further clear that the law does not contemplate in its provisions "thoroughbreds." In order to be "thoroughbreds" an animal must be imported, or the stock distinctly traceable on both sides from imported stock from across the waters, and "across the waters" is defined by the department,

If the law contemplated this class of animals, it would be almost entirely inoperative for countries bordering on the United States; a grade animal may be a much better animal for breeding purposes than a pure bred animal.

I have thus endeavored to state clearly and distinctly my reasons for protesting against your decisions. All of which I respectfully submit.

Yours, very truly,

(S'g'd) J. W. JONES.

46 CUSTOM-HOUSE, PORTLAND, MAINE,
Collector's Office, Sept. 23, 1879.

I hereby certify that the foregoing is a true copy of the protest of J. W. Jones against payment of duties on 130 sheep imported from Prince Edward's Island, N. B., now on file in this office.

Witness my hand and official seal the day and year last above written.

[L. S.] LOT M. MORRILL,
Collector.

(Copy.)

PLAINTIFF B.

PORTLAND, ME., *Dec.* 23, 1878.

Hon. LOT M. MORRILL,

Collector of Customs, Portland, Me.:

I hereby protest against your action in exacting from me duties on one hundred and thirty-eight sheep imported from Prince Edward's Island for breeding purposes. I carefully studied the statutes before importing these sheep, and satisfied myself that such sheep as I intended to import should be free from duty. In stating my reasons why a great injustice is
47 being done to me in exacting the duty on said 138 sheep, I beg to call your honor's attention to the statute on this subject, as well as to various decisions of the Secretary of the Treasury on this subject. It seems to have received considerable attention, as will be seen from the various decisions of the department at Washington.

The statutes, 1473 Heyl, refers to animals imported from beyond the seas for breeding purposes. From "beyond the seas," *is* interpreted in Synopsis of Decisions dated Dec. 9, 1875, No. 2548, embraces all territory beyond the limits of the United States. The statute, "that animals specially imported for breeding purposes (meaning from Prince Edward's Island or any other places out of the United States) shall be admitted free on proof satisfactory to the Secretary of the Treasury, and under such regulations as he may prescribe." In reference to such proof as is satisfactory and he has prescribed. The decision of Dec. 9, 1875, No. 2548, art. 383, Syn-
48 opsis of *of* Decisions, seems to have settled this question, and declares or clearly implies that proof satisfactory to the collector is proof satisfactory to the Secretary, viz: "The collector must also be satisfied that the animals are of superior stock adapted to improving the breeds in the United States."

As I have complied with the law in every particular, the only possible objection that can be urged against the admission of these sheep free is to satisfy your honor that the sheep are of superior stock adapted to improving the breeds in the United States. This I have endeavored to do, and have shown that these sheep are of superior stock, and particularly adapted to improving the breed of the United States, and I shall produce further evidence of this fact, which your honor has consented to hear.

In making your decision your honor has placed great stress on
49 instructions No. 805, in Synopsis of Decisions of 1871, viz: "As the prices paid for such animals are generally much higher than those paid for ordinary animals, the invoices thereof will be of great assistance in determining as to whether they are specially imported for breeding purposes or not."

I have offered to produce testimony from an ex-president of the agricultural society of this State, who has a portion of those sheep do come under the law, and are such as will improve the breed in the United States. The paid is low, but they were selected where every one was picked specially for breeding, both as to quality of wool and hardiness of the sheep, and it is, in the opinion of experts, that the wool of all these sheep will go into combing wool, and were selected for this purpose.

This wool brings from 15 to 20 % higher price per pound than ordinary wool. It seems also from instructions quoted above that the de-
50 sign of the government is to be satisfied that they are imported specially for breeding purposes. Synopsis of Decisions 1871, No. 931, also refers to matter of breeding purposes and as to stock. It also seems from above (No. 931) that the collector should take the consul's certificate and oath of the importer as satisfactory evidence. But in letter from department dated Dec. 27, 1875, No. 2571, Synopsis of Decisions, it is stated: "In addition the importer is required to present to the collector satisfactory evidence of superior stock." This additional evidence I have repeatedly announced (before your decision) that I was ready to produce.

The letter of Feb'y 3, 1871, to collector at New Orleans, Synopsis of Decisions, 1871, No. 789, states explicitly, without any qualification: "Stock for breeding purposes shall be admitted free." I have been referred to No. 2200, Synopsis of Decisions, 1875, a decision as to
51 sheep which "cost and were worth no more than the sheep which are usually imported for slaughtering purposes." This does not apply to my sheep, and the party in this case did not conform to the law. It would seem by the statute and rulings on the statute above quoted that the oath of the importer and the certificate of the American consul at the port of entry should be proof satisfactory to the Secretary, and consequently to the collector, that the importation was within the law, and consequently free. But in this case additional proof has been offered that is perfectly unquestionable in reference to points that, under ordinary expenses, there might be a question.

But in this case in protesting against your decision I am justified not only by the statute, but by every ruling of the department. Further protesting against your decision, Robert H. Barnard of Bridgton,
52 who authorized Mr. John Avard to buy these sheep for himself and me, has been in possession of a ranch in California for several years and owned several thousand sheep. These sheep were selected by Mr. Avard specially for breeding purposes. Mr. Barnard is thoroughly conversant with the habits and management of sheep, and is now engaged in introducing sheep breeding on a large scale in this his native State. Mr. Barnard and I would not be disposed to subject ourselves to the expense of sending to Prince Edward's Island, with all the annoyances and expense of transportation and custom arrangements, if as good a quality of sheep could be found at home. Further protesting against your decision, as I understand the law and the intention of the United States Government, instead of laying unnecessary and uncalled for burdens upon the agricult-
53 ural interests of the States, the design of the law by the very introduction of this statute was for us to foster these institutions.

It is further clear that the law does not contemplate in its provisions "thoroughbreds." In order to be thoroughbreds must be imported, or the stock distinctly traceable on both sides from imported stock from "across the waters" and not across the waters as defined by the department.

If the law contemplated this class of animals, it would be almost entirely inoperative for pure bred animals for countries bordering on the United States. A grade animal may be much better than a pure bred animal for breeding purposes.

I have thus endeavored to state distinctly and clearly my reasons for protesting against your decision, all of which I respectfully submit.

Yours very respectfully,

(S'g'd) J. W. JONES.

54 CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of the protest of J. W. Jones against payment of duties on 138 sheep from Prince Edward's Island, N. B., now on file in this office.

Witness my hand and official seal this 23rd day of Sept., A. D. 1879.

[L. S.] LOT M. MORRILL, *Collector.*

Plaintiff's appeal to the Secretary of the Treasury:

PORTLAND, *Dec. 17th*, 1878.

Hon. JOHN SHERMAN,

Secretary of the Treasury, at Washington:

I hereby appeal from the decision of Hon. Lot M. Morrill, collector of this port, who has exacted the duty on one hundred and thirty sheep, imported for breeding purposes and of superior breed, and intended to improve the stock in the United States. Said duty was exacted contrary to law, contrary to the statute 1473 Heyl, contrary to all instructions of the Secretary under the statute, and reported in Heyl, working
55 great injustice to this appellant; also detrimental to the agricultural interest of this State, for which interest and the interests of other States this statute was intended to foster and protect. In stating my reasons why I appeal from the decision of Hon. Lot M. Morrill, I will, in the first place, call your attention to the statute 1473 Heyl, which refers to animals imported from beyond the seas for breeding purposes. "From beyond the seas is interpreted in synopsis of decisions dated Dec. 9th, 1875, No. 2548, as embracing all territory beyond the limits of the United States." The statute states that "Animals specially imported for breeding purposes from beyond the seas (meaning from Prince Edward's Island or any other place out of the United States) shall be admitted free on proof satisfactory to the Secretary of the Treasury, and under such regulations as he may prescribe." In relation to such proof as he may prescribe and is satisfactory, I will refer your honor to decision December 9th, 1875, No. 2548, art. 383, synopsis of decisions, which clearly
56 sets forth that proof satisfactory to the collector is proof satisfactory to the Secretary of the Treasury, viz:

"The collector must also be satisfied that the animals are of superior stock, adapted to improving the breeds in the United States." This I have failed to do, and I appeal to your honor from his decision. There seems to be no question as to whether or not these animals were imported for breeding purposes. The only question, it seems to me, in order to have these sheep admitted free of duty, is to satisfy your honor that these sheep are of superior stock and adapted to improving the breeds in the United States. In order to prove that these are exactly the kind of sheep referred to in the statute, and to satisfy your honor, I shall produce affidavits from leading agriculturists in this State, as well as an expert from New Brunswick. Hon. Lot M. Morrill, in his decision, placed great stress on instructions

No. 805 in synopsis of decisions of 1871, viz: "As the price paid for such animals are generally much higher than those paid for ordinary
57 animals, the invoices thereof will be of great assistance as to determining as to whether they are imported for breeding purposes or not." The price paid in this case is low, but they were all selected where every sheep was picked especially for breeding purposes, both as to quality of wool and the hardiness of the sheep, and it is the opinion of experts that the wool of all these sheep will go into combing wool, and they were selected for this purpose. This wool is worth in the market from fifteen to twenty per cent. more than any other wool. The instructions seem to apply where appraisers did not consider themselves experts in judging of stock, and where they were going to parties out of the reach of the custom-house which passed on the sheep and to parties not known to the officers. It is not to be supposed by these instructions that indirect evidence and uncertain is to be taken in opposition to positive and direct testimony. The evidence which has been offered in this case is indisputable. The law above quoted, on which the collector places so much stress,
58 does not apply to this case at all. These instructions refer only as to whether or not the sheep were imported for breeding purposes, and in the collector's decision this point is not questioned, but it is admitted that they were imported for breeding purposes, and so stated by the collector and appraisers. It seems from decision No. 931, synopsis of decisions of 1871, that the collector should take the consul certificate and oath of the owner as satisfactory evidence, but in letter from the department dated Dec. 27th, 1875, No. 2571, synopsis of decisions, it is stated: "In addition, the importer is required to present to the collector satisfactory evidence that the animals are of superior stock," &c. This evidence has been produced, but it has failed to satisfy the collector, and in appealing from his decision I herewith offer the testimony to your honor.

The letter of Feb. 3rd, 1871, synopsis of decisions of 1871, No. 789, states explicitly without any qualification: "Stock for breed-
59 ing purposes shall be admitted free." Under these instructions my stock would certainly be admitted free, as it is not questioned but what it is imported for breeding purposes. It has been urged by the collector that this law was intended to apply to sheep called thoroughbred, but as nothing of the kind is mentioned in the statute, or any instructions from the department referring to the statute, in appealing from his decision with the utmost respect, I would ask your honor whether he should not be bound by what the law is rather than what he thinks the law should be. As I understand the law and the intention of the United States Government, instead of laying unnecessary and uncalled for burthens upon the agricultural interests of the State, it is clearly the design of the law, and the very introduction of this statute proves the fact, to foster these institutions. If the law contemplated thoroughbred animals it would be almost entirely inoperative, as I have clearly set forth in my protest to the collector. And now to
60 prove to your honor that these sheep are of superior stock intended to improve the breeds in the United States, I hereto annex the affidavit of Samuel F. Perley, of Naples, the leading agriculturist in this State, also affidavit of John P. Perley, of Bridgton, also of Robert A. Bar-

nard, who is an acknowledged expert on the breeding of sheep in this country, also John Avard's affidavit, who is an expert in New Brunswick. I could add my own, and many others who have thoroughly examined the sheep, but I am confident that evidence enough is herewith offered to satisfy your honor that these sheep should be admitted free of duty. In paying the duty under protest, I was forced to pay it to get possession of the sheep and save them from starvation, otherwise I should have left them in the hands of government. I have thus endeavored clearly and distinctly to state my reasons for appealing from the decision of Hon. Lot M. Morrill and I now ask you to reverse his decision,
61 and remit the duties on the one hundred and thirty sheep above mentioned. All of which is respectfully submitted. I also affix notice from the Somerside Progress, of Prince Edward's Island, Nov. 25th, 1878.

Yours, very truly,

J. W. JONES.

(Copy.)

CUSTOM-HOUSE, PORTLAND, MAINE,
Collector's Office, Dec. 26th, 1878.

SIR: Herewith I transmit protest and appeal of J. W. Jones against my decision in exacting duties on 130 sheep imported by him from Carlton, N. B., and brought into this district via Vanceboro', Maine, on the Maine Central R. R. cars on the 4th of November last.

On this case I have respectfully to report that the sheep referred to, together with 8 other sheep, were received at this port on the 4th ultimo, on a "transportation entry" from Vanceboro', dated Nov. 1st, 1878; that the value and description of the animals as declared in the "entry" was
$414.00 made up from the invoice, a copy of which accompanied the
62 entry, as follows, viz:

1 Leicester ram, full blood		$6 00
7 do ewes, do do		35 00
130 graded do ewes		325 00
		$366 00
Add expenses		38 00
		$404 00
To the entry was added com. 2½ %		10 10
		$414

The transportation entry was liquidated on the value thus made up viz:

$414.00 @ 20 % $82 80

On examination of the sheep on their arrival here, the appraiser reported: "One ram and seven ewes, superior stock, imported for breeding purposes, free, otherwise correct."

The transportation entry made at Vanceboro' was returned to that office for concurrence in the change made in classification at this port, which change was concurred in, and this office so informed by receipt of the papers with the liquidation made in accordance with the report of the appraiser here, viz:

8 sheep and coms..... $44 00, free.
130 sheep and coms,, $370 @ 20%..... $14 00

63 And the withdrawal entry here was accordingly liquidated on the 27th ult. The declaration of the person who purchased the sheep was sworn to before the U. S. consul at St. John, N. B., and the oath of the owner was taken here that "the sheep were purchased and imported for breeding purposes." The certificate of the consul, as required by art. 383, customs regulations, 1874, was not produced at the time entry was made at Vanceboro or this port, and a special bond was executed here by the owner of the animals to produce it. On this evidence the sheep invoiced as "full blood" were classified as "for breeding purposes," and therefore free. The remainder of the sheep (130) appearing by invoice as "graded," and the price paid for them, $2.50 each, indicating that they were not of such superior stock as is contemplated by the law and regulations concerning the importation of animals for breeding purposes, I assessed and collected duties on them to the amount of $74.00. It
64 is conceded by this office that the 130 sheep included in this importation were purchased abroad, and were brought into this port for "breeding purposes," and that so much of the regulations of 1874, art. 383, as relates to the certificate of the U. S. consul at port of shipment and the statement of the owner, under oath, that the animals were purchased for "breeding purposes" have been complied with; but the regulation above cited also requires that the collector must be satisfied that the animals so imported "are of superior stock." From all the evidence I am able to obtain in this case I fail to be satisfied in this particular; and all the decisions of the department touching the matter confirm my impressions that the "stock," to be regarded as "superior" in the sense contemplated by the law, regulations, and decisions, must contain the important quality of "pure blood," which the invoice in this case clearly shows these 130 sheep do not contain, as they are described as "graded;"
65 and if further evidence in the case in this direction should be needed, it would seem to be furnished by a reference to the price paid for the sheep $2.50 each. The price at which "sheep for slaughtering purposes" have [been] bought and sold in this market the past year has ranged from $2.50 to $3.00 per head.

In this connection, it should be said that the importer represented to me, and his representations are entitled to credit, that he made his claim for free entry of these animals at Vanceboro', where they were bonded for transportation; but the officer at that place was not willing to take the responsibility of so admitting them, and for the convenience of the owner allowed the sheep to proceed to this port, the question of duties to be adjusted here. In addition to the foregoing statement, I respectfully submit a communication received from the appraiser at this port relating to the case now under consideration.

The ap'ellant has complied with the law and regulations relating to protests and appeals.

I am, very respectfully,
66 (Signed) LOT M. MORRILL,
Collector.

Hon. JOHN SHERMAN,
Sec'y of the Treasury, Washington, D. C.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of the report of Lot M. Morrill, collector at this port, transmitting the protest and appeal of J. W. Jones against exacting duties on 130 sheep imported by him from St. John, N. B., on the 4th of Nov. last, now on file in this office.

Witness my hand and official seal this 23d day of Sept., 1879.

[L. S.] LOT M. MORRILL, *Collector.*

(Copy.)

CUSTOM-HOUSE, PORTLAND, MAINE,
Appraiser's Office, 8th, .

SIR: In compliance with your request I have the honor to submit a special report in relation to the importation in bond of one hun-
67 dred thirty-eight (138) sheep from Carlton, N. B., by John W. Jones, and entered for consumption at this port Nov. 18, 1878.

Of these sheep one buck and seven ewes are full-blood Leicester, or nearly so, superior stock, adapted to improving the breed in the United States, and are entitled to free entry under the provision of Revised Statutes, sec. 2505, as animals specially imported for breeding purposes.

One hundred and thirty sheep, invoiced as "grade ewes," appear to have been produced by crossing the Leicester and perhaps some other breeds with the native stock. Applying the suggestions in S. S. 805, I find the price paid for the "grades," as appeared by the invoice, was about half that paid for the Leicesters; and the cost here, including duties, is not more than the market value of the ordinary breeds of sheep of equal weight. They are inferior to the Leicesters of the same importation, and while they are superior to the average sheep in this vicinity, I am
68 of opinion that they are not of such superior stock as to authorize their free entry under the law and instructions.

It is proper to state that, since this importation, the same party has imported one hundred thirty-eight (138) more grade sheep similar to the first lot, and claims the right to enter them free of duty.

It is understood that there are hundreds, and perhaps thousands, of such sheep for sale in New Brunswick and Prince Edward's Island.

I am, very respectfully,
(Signed) SIDNEY PERHAM,
Appraiser.

Hon. LOT M. MORRILL, *Collector.*

A true copy:

SIDNEY PERHAM,
Appraiser.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of the report of Sidney Perham, appraiser at this port, now on file in this office.

Witness my hand and official seal this 23rd day of September, A. D. 1879.

[L. S.] LOT M. MORRILL,
Collector.

69 (Copy.)

CUSTOM-HOUSE, PORTLAND, MAINE,
Collector's Office, Jan'y 17th, 1879.

SIR: Herewith I transmit protest and appeal of J. W. Jones against my action in exacting duties on 138 sheep imported by him from St. John, N. B., via Vanceboro', Me., on the 14th of Dec. last.

On this case I have respectfully to report that the sheep mentioned in the protest were brought into this district from St. John, N. B., on the cars of the Maine Central R. R., on the 14th of Dec. last, having been entered at Vanceboro', Me., for "warehouse and immediate transportation;" that the "transportation entry" received from Vanceboro' was liquidated on a value of $432.00, including commissions and classification as live animals, as follows, viz:

$432.00, @ 20 % $86 40

On this entry, the appraiser at this port concurring in the action of the officer at Vanceboro', reported, "Rate and value correct," and on
70 this report the withdrawal entry made at this port was liquidated.

On the withdrawal entry here, Mr. Jones made claim for "free entry of the animals" on the ground that they had been purchased and were imported in good faith for breeding purposes, and made oath to this effect, and he also presented the oath of Mr. John Avard, his purchasing agent, taken and subscribed before the U. S. consul at St. John, N. B., that the sheep "were purchased solely for breeding purposes, they being of superior blood;" that the "certificate of the consul, as required by art. 383, custom regulations, 1874," was not presented at the time entry was made at Vanceboro' or this port, and a special bond was executed here by the owner of the animals to produce it.

That it was the intention of the purchaser and importer to bring these sheep into this country for "breeding purposes" I have no doubt; but understanding the law and the regulations and decisions of
71 the department to contemplate and provide that only animals of "superior blood" or breed shall be admitted to free entry, and not being satisfied, as required by art. 383 "customs regulations," that the animals in question possess the qualities to entitle them to the designation of animals of "superior breed," I have assessed and collected duties on them to the amount of $86.40.

The appellant has complied with the law and regulations relating to protests and appeals.

I am, very respectfully,
(Signed) LOT M. MORRILL, *Collector*.

Hon. JOHN SHERMAN,
Sec'y of the Treasury, Washington, D. C.

CUSTOM-HOUSE, PORTLAND, ME.

I hereby certify that the foregoing is a true copy of the report of Lot M. Morrill, collector at this port, transmitting the protest and appeal
72 of J. W. Jones against the exacting duties on 138 sheep imported by him from St. John, N. B., on the 14th of Dec. last, now on file in this office.

Witness my hand and official seal this 23rd day of September, A. D. 1879.

[L. S.] LOT M. MORRILL, *Collertor*.

(Copy.)

(312 F. 557 F.)

H. B. J.] TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 7, 1879.

COLLECTOR OF CUSTOMS, *Portland, Maine:*

SIR: The department duly received your letter of the 26th of December, 1878, and 17th of January, 1879, submitting the appeals 312 F. and 557 F. of J. W. Jones against your assessment of duty on 130 sheep imported by him, from Carleton, N. B., November 4th, 1878, and 130 sheep imported from New Brunswick on December 14th, 1878.

73 Free entry of these sheep was claimed under that provision of the free list of the Revised Statutes which exempts from duty animals imported for breeding purposes Article 383 of the Revised Statutes provides that it must be shown to the satisfaction of the collector at the port of entry, that the animals are of superior stock and adapted to improving the breed in the United States before they can be admitted to free entry.

It also provides that the owner shall be required to produce to the collector, at the port of importation, a certificate from the U. S. consul at the port of shipment showing that the animals are, to the best of his information and belief, intended for breeding purposes in the United States.

In the cases under consideration you report that although the sheep were graded sheep they were not of such superior stock as were adapted to improving the breed in the United States; and you also report that

74 the consular certificate mentioned in article 383 was not produced in either case.

The importer has submitted a considerable number of affidavits to establish his claim that the animals are of such superior stock as would properly entitle them to exem'tion from duty.

The department, however, considers that under article 383 no action on this class of cases favorable to the appellant can be taken by this department unless the collector is satisfied that the animals are properly of a class which should exempt them from duty. You having reported adversely upon this point, and the consular certificate before mentioned not having been produced, the department decides to affirm your action in both cases, and takes occasion also to state that from the evidence submitted it is of opinion that your action upon the merits of the case were properly taken.

Very respectfully,

By order: (Signed) H. F. FRENCH,
Assistant Secretary.

75 CUSTOM-HOUSE, PORTLAND, ME.,
Collector's Office, March 6, 1879.

I hereby certify that the foregoing is a true copy of the original letter of the Secretary of the Treasury on file in this office.

Witness my hand and seal of office the day and year last above written.

[L. S.] LOT M. MORRILL, *Collector.*

The defendant introduced the testimony of numerous witnesses, and the

rules and regulations prescribed by the Secretary of the Treasury, as follows:

(Copy.)

(805.)

Free entry of animals imported for breeding purposes.

"Before admitting animals to free entry, which are allowed to be specially imported for breeding purposes, a careful examination of them must be made by collectors, in order to ascertain if they are of superior stock and that their importation will tend to improve the breed in the United States." "As the prices paid for such animals are generally much
76 higher than those paid for ordinary animals, the invoices thereof will be of great assistance in determining as to whether they are specially imported for breeding purposes or not."

March 31, 1871.

From synopsis of decisions 1871, Treasury Department.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of No. 805, Synopsis of Decisions Treasury Department for A. D. 1871, now remaining in this office.

Witness my hand and official seal this 23rd day of Sept., A. D. 1879.

[L. S.] LOT M. MORRILL,
Collector.

CUSTOM-HOUSE, PORTLAND, MAINE,
Collector's Office.

(Copied from custom regulations, 1874.)

Free entry of animals.

ART. 383. To admit to free entry "animals from beyond the seas" when imported for breeding purposes the owner thereof will be required to produce to the collector at the port of importation a certificate
77 from the United States consul at the port of shipment showing that the animals are, to the best of his information and belief, intended for such purpose, and also a statement of the owner under oath that the animals were purchased abroad and imported into the United States especially for breeding purposes.

The collector must also be satisfied that the animals are of superior stock, adapted to improving the breed in the United States. The term "beyond the seas" is applicable with reference to any territory beyond the limits of the United States.

Act July 14, 1870, § 21.

CUSTOM-HOUSE, PORTLAND, MAINE.

I hereby certify that the foregoing is a true copy of article 383 of customs regulations of 1874, now on file in this office.

Witness my hand and official seal this 23rd day of September, A. D. 1879.

[L. S.] LOT M. MORRILL,
Collector.

78 UNITED STATES OF AMERICA,
Maine District, ss:

The circuit court of the United States, begun and holden at Portland, within and for the Maine district, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and seventy-eight, to any judge of any court of record, any notary public in the province of New Brunswick, or any magistrate authorized by law to administer oaths or take depositions in the city of Fredrickton, in the province of New Brunswick:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers to the interrogatories hereunto annexed of Julius L. Inches, of Fredrickton, in the province of New Brunswick, a witness to be produced, sworn, and examined before you, to be used in a certain case now pending in said court, wherein John Winslow Jones is plaintiff and Lot M. Morrill, collector of customs for the port of Portland and Falmouth, is defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witness as aforesaid to be brought before you, and while present before you to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by said witness in your presence. And the same so taken and subscribed to return, together with this commission and your doings herein, enclosed, sealed, and directed to the circuit court aforesaid next to be holden at Portland on the twenty-third day of April next.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Morrison R. Waite, at Portland, this fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

[L. S.] A. H. DAVIS, *Clerk.*

N. B.—You shall not, except by the consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponents in their order and take the answer of the deponents to each fully and clearly.

79 DISTRICT OF MAINE, *ss:*

Circuit court of the United States.

C. P. Mattocks, att'y.

JOHN WINSLOW JONES, PLAINTIFF,
LOT M. MORRILL, COLLECTOR OF CUSTOMS for the port of Portland & Falmouth, def't.

W. F. Lunt, U. S. dist. atty.

Interrogatories to be administered to Julius L. Inches, of Fredrickton, in the province of New Brunswick, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, before any judge of any court of record, any notary public in the province of New Brunswick, or any magistrate authorized by law to administer oaths and take depositions in the city of Frederickton, in the province of New Brunswick, the commission therein named in a certain cause depending in the circuit court of the United States for the district of Maine, wherein John Winslow Jones is plaintiff and Lot M. Morrill, collector of customs for the port of Portland and Falmouth, is defendant, on the part of the said defendant.

80 Int. 1. What is your name, age, and occupation, and where do you reside?

Int. 2. Do you know the parties plaintiff and defendant in the title to these interrogatories named, or either, or which of them; and how long have you known them, or either, and which of them?

Int. 3. Please state if you are in any official position in the province of New Brunswick; if yea, in what?

Int. 4. What knowledge, experience, and observation have you had in the raising, breeding, and in the purchase and sale of sheep in the provinces of New Brunswick and Prince Edward's Island? Please answer fully.

Int. 5. What sheep of the province of New Brunswick and Prince Edward's Island are of a breed superior to the ordinary market or slaughter sheep of the province?

Int. 6. If you know, please state what was the average market value of the ordinary fat market sheep of the provinces mentioned during the autumn of 1878?

Int. 7. Will you please state if there are sheep in said provinces sometimes called grade Leicester, and if so, how are they bred, and what
81 was the ordinary market value of such animals there in the autumn of 1878?

Int. 8. If there were any pure-blooded Leicester sheep in said provinces in the autumn of 1878, what was the ordinary market value of such animals? Please state what you know of any pure-blooded Leicester sheep in said provinces.

(Int. 6. Objected to by plaintiff's counsel as irrelevant and immaterial.)
(Int. 7. Objected to by plaintiff's counsel as irrelevant and immaterial.)
(Int. 8. Objected to by plaintiff's counsel as irrelevant and immaterial.)

Cross-interrogatories propounded by C. P. Mattocks, counsel for plaintiff:

X 1. What, if any, knowledge have you of any sheep imported by

plaintiff to the State of Maine in the year 1878 from the above-named provinces?

X 2. What, if any examination of said sheep did you make?

X 3. State, if you know, what proportion of said sheep, so imported by plaintiff, were pure Leicester and what proportion were grade Leicester.

C. P. MATTOCKS,
Counsel for Pl'ff.

82 Notice to take the above deposition waived.

C. P. MATTOCKS,
Counsel for Pl'ff.

MAINE DISTRICT, *ss:*

Circuit court of the United States, district of Maine, Sept. 7, A. D. 1878

I, A. H. Davis, clerk of the circuit court of the United States for said district, hereby certify that the foregoing is a true copy of the interrogatories and cross-interrogatories on file in said court in said cause.

Witness my hand and the seal of said court this 15 day of April, A. D. 1879.

[L. S.] A. H. DAVIS, *Clerk.*

Circuit court of the United States.

C. P. Mattocks, attorney.

JOHN WINSLOW JONES, PLAINTIFF,
and
LOT M. MORRILL, COLLECTOR OF CUSTOMS for the port of Portland & Falmouth, defendant.

W. F. Lunt, U. S. d*ef*'t attorney.

83 In accordance with the commission hereto annexed and directed to any judge of any court of record, any notary public of the province of New Brunswick, or any magistrate authorized by law to administer oaths or take depositions in the city of Fredericton, in the province of New Brunswick, I, the undersigned, Edward Byron Winslow, a notary public of the province of New Brunswick, duly commissioned and sworn, and residing at Fredericton, in the said province of New Brunswick, have taken the evidence of Julius L. Inches, referred to in the commission and authority hereto annexed, and which evidence is also hereto attached.

[L. S.] E. BYRON WINSLOW,
Notary Public, New Brunswick.

Circuit court of the United States.

C. P. Mattocks, attorney.

JOHN WINSLOW JONES, PLAINTIFF,
and
LOT M. MORRILL, COLLECTOR OF CUSTOMS for the port of Portland and Falmouth, defendant.

W. F. Lunt, U. S. d*ef*'t attorney.

84 The examination of Julius L. Inches, of Fredericton, in the

province of New Brunswick, the witness named in the annexed interrogatories, who being by me, the undersigned, Edward Byron Winslow, a notary public of the province of New Brunswick, duly sworn, examined on oath under and by virtue of the annexed commission, saith as follows:

To the first interrogatory the said witness says: Julius L. Inches; I am fifty-four years of age; I am secretary of agriculture for the province of New Brunswick; I reside in Fredericton, New Brunswick.

To the second interrogatory the said witness says: I know neither the plaintiff nor defendant in this suit.

To the third interrogatory the said witness says: Yes, I am secretary of agriculture of the province of New Brunswick, appointed by the government of New Brunswick.

To the fourth interrogatory the said witness says: I have been engaged in farming for many years, and intimately identified with agricultural matters in this province, including breeding, rearing, purchas-
85 ing and selling sheep. In my official position as secretary for agriculture, I have the supervision of all the agricultural societies in the province. One of the principal objects of these societies is the improvement of stock, including sheep. I have also had the charge of importing sheep on government account from the province of Ontario and Great Britain. My opportunities of observing the sheep of New Brunswick have therefore been many. I have taken an active part in managing exhibitions; that of 1878, held at Fredericton, New Brunswick, was under my management. At those exhibitions the best sheep in this province are exhibited; they are entered, shown, and judged in the several breeds as pure bred, and grade or cross-bred separately. My experience has, therefore, been more than local.

My experience of Prince Edward Island sheep has been confined to observing, examining and comparinng animals brought from that island to the province.

96 To the fifth interrogatory the said witness says: In New Brunswick there are pure breed Leicester and Cotswold sheep. Very few, if any other, superior breed, superior to the ordinary market or slaughtering sheep. I cannot speak for Prince Edward Island, except as before stated.

To the sixth interrogation the said witness says: The average price of the ordinary fat market sheep in this province in the autumn of 1878 was for lambs about $2.50, and for older animals $3 to $4; a very few extra would bring a little more, say 1 or 2 per ct., $5.

To the seventh interrogatory the said witness says: Yes; the term grade Leicester is frequently used in New Brunswick to denote sheep breed from the ordinary ewes of the country by a Leicester ram. The market value of this class of sheep would be the same as the value of the fat market sheep as set forth in the answer to the sixth interrogatory. In point of fact the ordinary sheep of the country are generally this class being bred indifferently by Leicesters, Cotswolds, or other of the pure breeds.

87 To the eighth interrogatory the said witness says: The number of pure bred Leicester sheep in New Brunswick in the autumn of 1878 was very small. It is quite impossible to name their market value as breeding sheep, breeders being averse to paying large prices with-

out undoubted proof of purity of blood; without such proof they were worth the price of ordinary fat market sheep only. The want of such sheep induced the government to make an importation of nearly one hundred pure bred Leicester sheep from Great Britain in October, 1878, which were sold at public auction, bringing an average of about $32 each, as in these cases the purchasers could rely upon their being pure.

To the first cross-interrogatory propounded by C. P. MATTOCK, counsel for the plaintiff, the witness says: None.

To the second cross-interrogatory, propounded as aforesaid, the said witness says: None.

To the third cross-interrogatory, propounded as aforesaid, the said witness says: None.

JULIUS L. INCHES.

88 Sworn to at the city of Fredericton, in the county of York, in the province of New Brunswick, this 19th day April, A. D. 1879, before me, the undersigned. In testimony whereof I have hereto set my hand and official seal.

E. BYRON WINSLOW, [L. S.]
Notary Public, New Brunswick.

MEMO.—This deposition was introduced by defendants generally upon the merits of the cause and specially under motion to dismiss, to show notice to plaintiff of appearance of defendant's attorney.

W. F. LUNT,
U. S. Def't Att'y, for Defendant.

C. P. MATTOCKS, *Plaintiff's Attorney.*

The court ruled and instructed the jury that under the statute animals, whether of superior or inferior stock, if, in fact, imported specially for breeding purposes, are entitled to be admitted free of duty.

89 That the law does not give to the Secretary of the Treasury power to prescribe in the regulations what classes of animals imported for breeding purposes shall be admitted free of duty.

That the written notice or protest, given by the plaintiff to the defendant collector upon each entry, that the plaintiff importer was dissatisfied with the collector's decision, copies of which said notices are annexed hereto, marked Plaintiff A and B, did set forth the grounds of his objection thereto distinctly and specifically within the requirements of the statute.

Whereupon, and before the cause was committed to the jury, the defendant then and there excepted to the rulings, directions, and instructions so by the court ruled in said action and given to the jury as aforesaid, and to each and every part thereof, and in open court prayed that said exceptions and each of them might be allowed.

The jury, under the foregoing rulings, directions, and instructions returned the following verdict, viz:

UNITED STATES OF AMERICA:

90 U. S. circuit court, Maine district, September term, A. D. 1879.

JOHN WINSLOW JONES
vs.
LOT M. MORRILL, COLLECTOR OF CUSTOMS FOR THE revenue district of Portland and Falmouth, in the State of Maine.

The jury find that the defendant did promise in manner and form as the plaintiff in his writ and declaration hath declared against him, and assess damages for the plaintiff in the sum of one hundred and sixty-seven dollars and sixty-one cents ($167.61).

DAVID B. LIBBY, *Foreman.*

And inasmuch as the matters hereinbefore referred to and said rulings, directions, and instructions would not otherwise appear by the record of said cause, the counsel on the part of the defendant prayed the court to sign this bill of exceptions, containing the several matters given in evidence, and the rulings and instructions of the court thereon, and the exceptions thereto, that the same may become a part of the record of said cause, all of which being found to be true is allowed.

91 In witness whereof I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord eighteen hundred and seventy-nine.

JOHN LOWELL,
Circuit Judge.

UNITED STATES OF AMERICA,
District of Maine:

I, A. H. Davis, clerk of the circuit court of the United States for the district of Maine, hereby certify the foregoing to be a true and perfect transcript of the record and proceedings in the cause therein named as the same appear of record in my office.

Witness my hand and the seal of said circuit court this 4th day of November, A. D. 1879.

[SEAL.] A. H. DAVIS, *Clerk.*

(Indorsement on cover:) No. 140. Lot M. Morrill, collector of customs, &c., plaintiff in error, vs. John Winslow Jones. Maine C. C. U. S. Filed 8th November, 1879.

16-466

DEC 18 1882
JAMES H. MCKENNEY, CLERK

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1882.

LOT M. MORRILL, COLLECTOR,
Plaintiff in Error,

vs.

JOHN WINSLOW JONES.

No. 140.

Brief for the United States.

WM. A. MAURY,
Assistant Attorney General.

R. O. POLKINHORN, PRINTER, WASHINGTON, D. C.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1882.

LOT M. MORRILL, COLLECTOR,
Plaintiff in Error,

vs.

JOHN WINSLOW JONES.

No. 140.

Brief for the United States.

Jones, the defendant in error, sued the Collector of Portland for duties alleged to have been illegally exacted from him in the following circumstances:

Jones was the consignee and, in part, owner of two lots of sheep imported from Prince Edward's Island, first into Vanceboro, where they were entered for warehouse and immediate transportation in bond to Portland, at which point they were entered to be re-warehoused and withdrawn for immediate consumption, and duties collected on the whole of one lot, and the greater part of the other, to the amount of $160.40, against the protest of defendant in error that the animals in question were specially imported for breeding purposes, under Section 2505, R. S., which provides *inter alia* that "animals, alive, specially imported for breeding purposes from *beyond the*

seas shall be admitted free, upon proof thereof satisfactory to the Secretary of the Treasury, *and under such regulations as he may prescribe.*"

The defendant in error appears to have established, satisfactorily, that the animals in question were imported for breeding purposes, but the action of the collector in exacting the duty was based on Article 383 of the Treasury Customs Regulations (R., p. 30), which requires that the collector must not only be satisfied that the animals were purchased abroad and imported especially for breeding purposes, but must be also satisfied "*that the animals are of superior stock, adapted to improving the breed in the United States.*"

The Collector, not being satisfied that the animals in question were of "superior stock," held they were not entitled to come in on the free list; in which opinion he was, on appeal, sustained by the Secretary of the Treasury (R., p. 29).

The action was brought in the State court, and thence removed to the U. S. Circuit Court, under section 643, R. S.

After the removal of the case and before pleading, the plaintiff in error moved the court to dismiss the action under section 3012 R. S., on the ground that the defendant in error had not, within thirty days after due notice of the appearance by the defendant by his attorney, served on the plaintiff in error a bill of particulars, as required by the said section (p. 6).

But the Court denied the motion, and thereupon the plaintiff in error excepted to the ruling (p. 7).

The evidence being closed, the Court instructed the jury (1) that if animals were imported specially for breeding purposes, they were entitled to be admitted free of duty, "whether of superior or inferior stock;" (2) that the Secretary has no power to say what classes of animals imported for breeding shall be admitted free; (3) that the written notice or protest, given by the plaintiff to the defendant (pp. 18–23), was sufficiently distinct and specific, to which rulings of the Court, and to each and every of them, the defendant then and there excepted (p. 35).

Of the rulings excepted to and brought up for review by this writ of error, two may be passed, as not founded—namely (1), the denial of the motion to dismiss the suit for the want of a bill of particulars, under section 3012 R. S., there being no evidence tending to show that the defendant had served the plaintiff with "due notice" of his appearance, which, it would seem, must be an indispensable basis for the stringent measure called for by the motion, and (2), the instruction that the protest by plaintiff of the illegality of the demand for duties was sufficiently distinct and specific, it being apparent that the ruling was correct.

This leaves one question open on the bill of exceptions, namely, whether the Secretary of the Treasury had the power to require the Collector to exclude the animals in question, unless he was satisfied that they were of "superior stock, adapted to improving the breed in the United States;" and another question, *outside* the bill of exceptions, and going to the

right of the plaintiff below to maintain his action, namely, whether Prince Edward's Island, whence the sheep were brought, is "*beyond the seas*," within the meaning of Section 2505, R. S.

We will consider these questions in their order.

First.

It is to be observed that the effect of Treasury Regulation 383 was not to exclude the defendant's cattle *absolutely*, but only to deprive him of the privilege of the *free list*, and that whilst it is true that laws laying imposts are taken strictly against the Government, it is equally true that laws granting exemptions from taxation are rigorously construed against those claiming exemption. The Government is, therefore, entitled to a liberal interpretation of the provisions of law allowing importations free of duty.

In holding that the Secretary of the Treasury had transcended his powers under the law in requiring animals imported for breeding purposes to be of superior quality, and adapted to improving the breed of the country, the learned judge of the Court below intimates no opinion as to the scope of the Sectary's power to regulate the importation of such animals.

The law under which the regulation in question was made was approved the 14th of July, 1870, (16 Stats., p. 215), and from that time until this controversy arose, in November or December, 1878, the validity of the regulation was never assailed.

The Statute (§ 2505, R. S.) says that breeding cattle shall be admitted free of duty, upon satisfactory proof that they are imported for that purpose, "*and* under such regulations as he [the Secretary] may prescribe," and the question is what is the subject matter over which it was intended that the power to regulate should ride.

We maintain that it is but reasonable to conclude from the silence of the Statute as to the scope of the power, that it must have been the intention of Congress that the power should be coextensive with the object for which the exemption from duty was granted, and that the power is well exercised so long as subsidiary to that object.

Undoubtedly, the object of Congress in granting the exemption was to stimulate the improvement of the breed of useful animals, and, as we contend, the power of regulation given to the Secretary of the Treasury was to enable him to secure that good to the public by restricting the operation of the exemption to such importations only as promised to improve the breed of the country. It is by legislation guided and applied by regulation that Congress has sought to attain this important end, for it would seem clear that legislation without regulation would be inadequate.

It will be observed that the Secretary's power to make regulations touching free entries does not exist except where *specially* given, and that it is given as to a very few, only, of the subjects embraced by

the free list, and appears in each case to have been given for the purpose of securing to the public all the benefit sought to be obtained by the exemption from duty.

It will no doubt be said that under this construction any regulation the Secretary might make would be valid, but this by no means follows, for while he has a large discretion in the matter, 'tis not arbitrary, but governed by law. Municipal corporations may have general powers to make by-laws subject to no express restriction, but the Common-law Courts on both sides of the Atlantic have uniformly held that such powers are limited by the implied condition that they must be reasonable.

If the argument of the Court below is sound, then horses, sheep or hogs imported for breeding purposes from a country where a dangerous contagious disease prevails among such animals must be entered free, notwithstanding the Secretary of the Treasury says to the contrary. It would be bad enough to admit such animals on any terms, and admitted they must be, as the prohibition of § 2493, R. S. applies only to animals of the bovine class, but still worse to welcome and encourage their introduction by entering them as free.

Second.

It appears like a partial nullification of the Statute to hold that the contiguous British Provinces are "beyond the seas," within the meaning of § 2505, R. S.

The expression "beyond the seas," used in the Statute of Limitations, of 21 James I, Ch., 16, has always had the sense there given it whenever used in subsequent statutes of the same kind in this country, as it has been, despite its geographical inappropriateness; but it would be as unreasonable to conclude that the expression, when used in laws of another kind, must, nevertheless, have the same sense, as it would be to hold that the expression "ebb and flow of the tide," whenever used in an act of Congress, must be regarded as convertible with navigability, because it has been so accepted in England and this country in determining the limits of the jurisdiction in admiralty. We maintain, therefore, that the expression, beyond the seas, as used in § 2505, must have its ordinary signification.

We submit that the judgment should be reversed.

WM. A. MAURY,
Assistant Attorney General.

16-466

SUPREME COURT U.S.
JAN 3 1883

IN THE

SUPREME COURT OF THE UNITED STATES.

LOT M. MORRILL,
Collector of Customs, &c.
Plaintiff in Error,

vs.

JOHN WINSLOW JONES,

In Error to the Circuit Court of the United States, for the District of Maine.

No. 140.

October Term,

1882.

BRIEF FOR DEFENDANT IN ERROR.

By Charles P. Mattocks, Counsel for John Winslow Jones.

Castell & Co., Printers, Portland, Me.

IN THE

SUPREME COURT OF THE UNITED STATES.

LOT M. MORRILL,
Collector of Customs, &c.
Plaintiff in Error,
vs.
JOHN WINSLOW JONES,
In Error to the Circuit Court of the United States, for the District of Maine.

No. 140.
OCTOBER TERM,
1882.

BRIEF FOR DEFENDANT IN ERROR.

BY CHARLES P. MATTOCKS, COUNSEL FOR JOHN WINSLOW JONES.

This is a suit brought in the Superior Court, within and for the County of Cumberland, State of Maine, February 15th, 1879, by John Winslow Jones of Deering, in said County, against Lot M. Morrill of Portland, Maine, then and now Collector of Customs of the United States, for the Port of Portland and Falmouth, to recover back the sums of seventy-four dollars, and eighty-six dollars and forty cents, in all, one hundred and sixty dollars and forty cents, paid by Jones under protest, as duties upon two lots of sheep imported by him from Prince Edward's Island, N. B., for breeding purposes.

Upon petition of the original defendant, the cause was removed from the Superior Court to the Circuit Court of the United States, District of Maine, under the provisions of section 643 of the Re-

vised Statutes of the United States, at the Sepember term, 1879, when and when it was tried. Hon. John Lowell, Circuit Judge, presiding, under whose rulings and instructions the jury returned their verdict for Jones, for the full amount claimed, with interest to date of rendition of verdict, being the sum of one hundred, sixty-seven dollars and sixty-one cents. Record, p. 36.

The only exceptions taken by the original defendant at the trial of the cause, appear upon the printed record, pp. 7 and 35.

FIRST.

Upon the motion of defendant to dismiss the action "because he says that the said plaintiff did not, within thirty days after due notice of the appearance of the defendant by his attorney, serve on the defendant or his attorney a bill of particulars of the plaintiff's demand, giving the name of the importer or importers, the description of the merchandise and place from which imported, the name of the vessel or means of importation, the date of the invoice, the date of the entry at the Custom House, the precise amount of duty claimed to have been exacted in excess, the date of payment of said duties, the day and year on which protest was filed against the exaction thereof, the date of the appeal thereon to the Secretary of the Treasury and date of decision, if any, on such appeal, according to the provisions of Section 3012 of the Revised Statutes of the United States."

The plaintiff in error admitting in his brief, page 3, that there was "no evidence tending to show that defendant had served the plaintiff with "due notice" of his appearance," and consequently that there was no error in the ruling of the Court below in the denial of the motion to dismiss the suit for the want of a bill of particulars, under Section 3012. R. S., no argument is necessary upon this point.

SECOND.

As to the ruling and instructions of the presiding Judge, "that under the statute, animals, whether of superior or inferior stock,

if, in fact, imported specially for breeding purposes, are entitled to be admitted free of duty.

That the law does not give to the Secretary of the Treasury power to prescribe in the regulations what classes of animals imported for breeding purposes shall be admitted free of duty.

That the written notice or protest given by the plaintiff to the defendant Collector upon each entry, that the plaintiff importer was dissatisfied with the Collector's decision, copies of which said notices are annexed," (to transcript of record, pp. 18 to 23.) "marked Plaintiff A. and B., did set forth the grounds of his objection thereto distinctly and specifically within the requirements of the statute."

Section 2505, of the Revised Statutes of the U. S., provides that "The importation of the following articles shall be exempt from duty:" * * * "Animals, alive, specially imported for breeding purposes from beyond the seas, shall be admitted free, upon proof thereof satisfactory to the Secretary of the Treasury, and under such regulations as he may prescribe."

"That it was the intention of the purchaser and importer (Jones) to bring these sheep into the country for "breeding purposes" I have no doubt," is the language used by Collector Morrill in his communication addressed to the Secretary of the Treasury, under date of January 17th, 1879—record p. 28.

Whether or not the ruling and instruction of the presiding Judge "that the law does not give to the Secretary of the Treasury power to prescribe in the regulations what classes of animals imported for breeding purposes shall be admitted free of duty," is correct, appears to be the principal question raised by the exceptions of the plaintiff in error, as the last exception named on page 35 seems to be disposed of by the statement made in the communication above referred to, (p. 28) wherein the Collector says "The appellant has complied with the law and regulations relating to protests and appeals," and by the further admission of the plaintiff in error in his brief p. 3, wherein he says that the error is not founded, "it being apparent that the ruling was correct."

Calling the attention of the Court to the only *real* question in the case as contended by the defendant in error, as to the authority of

the Secretary of the Treasury in the premises, he begs leave to refer to Title vii, Sec. 251 of Chapter 2 of the Revised Statutes which provides among other things that the Secretary shall "give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law."

A cursory examination of the documentary evidence on pp. 25 to 30 inclusive, shows that more force was given by the government officials, to the rule of the Secretary in Art. 383, p. 30, that "The Collector must also be satisfied that the animals are of superior breed adapted to improving the breed in the United States," than they gave to the *Statute* which simply provides that "animals, alive, specially imported for breeding purposes from beyond the seas, shall be ad-admitted free."

In Lennig *v.* Maxwell 3 Blatch. 125, the Court held that the construction of the Tariff act by the Treasury Department was not conclusive upon either party, and that the Collector was not justified by such instructions in imposing duties not warranted by law.

And in Munsell *et. al.*, *v.* Maxwell, *Ibid.* 364, the above decision was cited and approved, and the Court held that the directions of the Treasury Department to the Collector to compute duties on a basis of adding two and a half per cent. commissions, does not legalize a levy of duties on more than than the usual rate of commissions, which were shown to be two per cent.

See Riess, *et. als.*, *v.* Redfield, 4 Blatch. 381.

In Greely *v*, Thompson, *et. al.*, 10 How. 234*, cited in Maxwell in Error *v.* Griswold, *et. al.*, *Ibid.* 254*, the language of the court is "that though the money was collected in obedience to orders from the Treasury Department, which the Collector, so far as regards the Department, was bound to follow, yet this did not justify him as to others, or for a recovery by third persons, if not liable by law to pay so high duties."

Laws imposing duties are not construed beyond the natural import of the language, and duties are never imposed upon the citizens, upon doubtful interpretations.

Adams *v.* Bancroft. 3 Sumner, 384.

In cases of serious ambiguity in the language of a revenue act. or doubtful classification of articles, the construction is to be in favor of the importer, as duties are never imposed on the citizen upon vague or doubtful interpretations.

Powers, *et. als.*, *v.* Barney, 5 Blatch. 202.

In the communication from Collector Morrill to the Secretary of the Treasury, under date of Dec. 26, 1878, (Record, p. 26.) he states that "It is conceded by this office that the 130 sheep included in this importation were purchased abroad."

The question attempted to be raised by plaintiff in error "*outside*" the bill of exceptions, and going to the right of the plaintiff below to maintain his action, namely, whether Prince Edward's Island, whence the sheep were brought, is "beyond the seas" within the meaning of Section 2505, R. S., appears to be sufficiently answered, if an answer is necessary, by the foregoing admission and the general rule that objections not taken in the Court below are not available an error in the appellate Court, and still further by the decision contained in Synopsis of Decisions Treasury Department, dated Dec. 9, 1875, No. 2548, in which the words, "beyond the seas" are interpreted as embracing "all the territory beyond the limits of the United States."

The words "beyond seas," as defined in Bouv. Law Dict., p. 167 is construed to signify *out of the United States*, and in Co. Lit. 244 a 1 Bl. Com. 457 within the four seas, *infra quatuor maria*, and beyond the four seas, *extra quatuor maria* in English law books signify within and without the kingdom of England, or the jurisdiction of the king of England.

Courts sitting in error will not discuss questions not raised by the record before them.

The City *v* Babcock, 4 Wall 240.

The defendant in error submits that as the pleadings in the Court below did not raise a question of right of recovery by Jones, on account of the place from whence the sheep were imported, that it is too late for plaintiff in error to ask this Court to express an

opinion upon a matter of defence not brought to the consideration of the Court below.

Bell *v.* Bruen, 1 How. 169*.

The plaintiff in error, in his brief, (p. 6.) admits that any regulation which the Secretary might make would not be valid—for while he has a large discretion in matters, 'tis not arbitrary but "governed by law."

Having admitted thus much and the Court having held the law as previously stated in Adams *v.* Bancroft, there seems to be nothing more to *argue* in the cause, and the defendant in error submits the matter to this honorable Court, asking that the verdict of the jury and judgment of the Court below be affirmed.

CHARLES P. MATTOCKS,

Attorney for John Winslow Jones.